

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.384 of 2015

Marappan

...Petitioner/Appellant

Vs.

1.V.Manikandan

2.S.Devi

3.Reliance General Insurance Co. Ltd.,
First Floor, Dhanam Towers,
No.1, Binny Main Road,
Park Road,
Tirupur - 641 601.

...Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 11.10.2013 made in MCOP No.118 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

For Appellant : Ms.Sudha for
Mr.C.Munusamy

For R3 : Mr.S.K.Moorthy

R1 Refused

R2 Tapal not yet returned either
served (or) unserved

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the judgment and decree 11.10.2013 made in MCOP No.118 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai.

2. The appellant filed M.C.O.P.No.118 of 2012 on the file of the Motor Accidents Claims Tribunal, Sub Court, Perundurai claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in a motor vehicle accident that took place on 14.02.2012.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident had occurred only due to the rash and negligent driving of the first respondent / driver of the car belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company, being the insurer of the vehicle, to pay a sum of Rs.2,40,000/- as compensation to the appellant, at the first instance and recover the same from the respondents 1 and 2.

4.Being dissatisfied with the quantum so awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

5. The learned counsel appearing for the appellant contended that the Tribunal has erred in deciding the quantum of compensation payable to the appellant when it has rightly held that the accident had occurred only due to the rash and negligent driving of the driver of the car / 1st respondent herein. The appellant sustained fracture on his right left, left forehead, left cheek, right heel and right elbow. He took treatment as in-patient and underwent surgeries. Further, he is continuing treatment as out-patient. The Tribunal has erred in not awarding any amount towards future medical expenses. The Tribunal has erred in awarding a meagre sum of Rs.1500/- towards extra nourishment when the appellant has sustained multiple fractures and undergone surgeries. Though Medical bill for a sum of Rs.85,645/- has been marked as Ex.P10, the Tribunal has granted only a sum of Rs.80,000/- towards medical bills. The Tribunal ought to have awarded more compensation towards permanent disability considering the evidence of PW2-Doctor, the disability certificate and x-ray marked as Exs.P15 & P16. The learned counsel further submitted that the appellant was aged 44 years and was running a power loom factory, at the time of accident and due to the injuries sustained in the accident, earning capacity of the appellant has been affected and the Tribunal has not awarded any amount towards loss of earning capacity. She finally submitted that the compensation awarded by the Tribunal under other heads are also very meagre and hence, the same needs substantial enhancement.

6.Per contra, the learned counsel appearing for the 3rd respondent-Insurance Company contended that the accident had occurred only due to the negligence on the part of the appellant in riding his two-wheeler and hence the Tribunal ought to have fixed contributory negligence on the part of the appellant. He submitted that the Tribunal has erred in fixing the entire negligence on the part of the 1st respondent/driver of the car belonging to the 2nd respondent, insured with the 3rd respondent. The 1st respondent did not possess a valid and effective driving licence at the time of accident and thus violated the policy

conditions and hence the 3rd respondent is not liable to pay any compensation to the appellant. Two vehicles are involved in the accident and therefore the insurance company of the motorcycle involved in the accident has to be impleaded as party to the claim petition and thus, the claim petition is bad for non-joinder of necessary parties. Stating so, the learned counsel prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the 3rd respondent-Insurance Company and perused the materials available on record.

8. From the materials available on record, it is seen that the 1st respondent had himself found guilty of the offence and surrendered before the Criminal Court. No evidence has been produced by the 3rd respondent to substantiate their claim that the appellant is also responsible for the accident. The Tribunal, after analysing the oral and documentary evidence, rightly came to the conclusion that the accident had occurred only due to the rash and negligent driving of the first respondent/driver of the car belonging to the 2nd respondent and as insurer of the vehicle, the 2nd respondent / insurance company has to pay compensation to the appellant. The Tribunal has also accepted the contention put forth on the side of the Insurance Company that the driver of the car had violated the policy conditions by not possessing the valid driving licence to drive the vehicle and rightly given liberty to the Insurance Company to recover the compensation from the driver and owner of the vehicle, after payment of compensation to the claimant.

9. As far as the quantum of compensation is concerned, it is the contention of the learned counsel for the appellant that in the accident, the appellant has sustained multiple fractures and undergone surgeries and the Tribunal has erred in not awarding any amount towards future medical expenses. No documentary evidence has been produced by the appellant to substantiate his claim that he would incur future medical expenses. Similarly, the appellant has not proved by any material evidence that due to the injuries sustained by him in the accident, his earning capacity has been affected. In the absence of any documentary evidence, the Tribunal has not awarded any amount towards loss of earning capacity and future medical expenses. This Court, perused each and every document and ultimately found that the Tribunal has reasonably compensated the appellant by awarding a just compensation. There are no grounds available to interfere with the said award of the Tribunal.

10. Accordingly, the Civil Miscellaneous Appeal is dismissed. No costs. The 3rd respondent-Insurance Company is directed to deposit the entire compensation as awarded by the

Tribunal, along with interest and costs, less the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant / claimant is permitted to withdraw the same on making proper application before the Tribunal.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

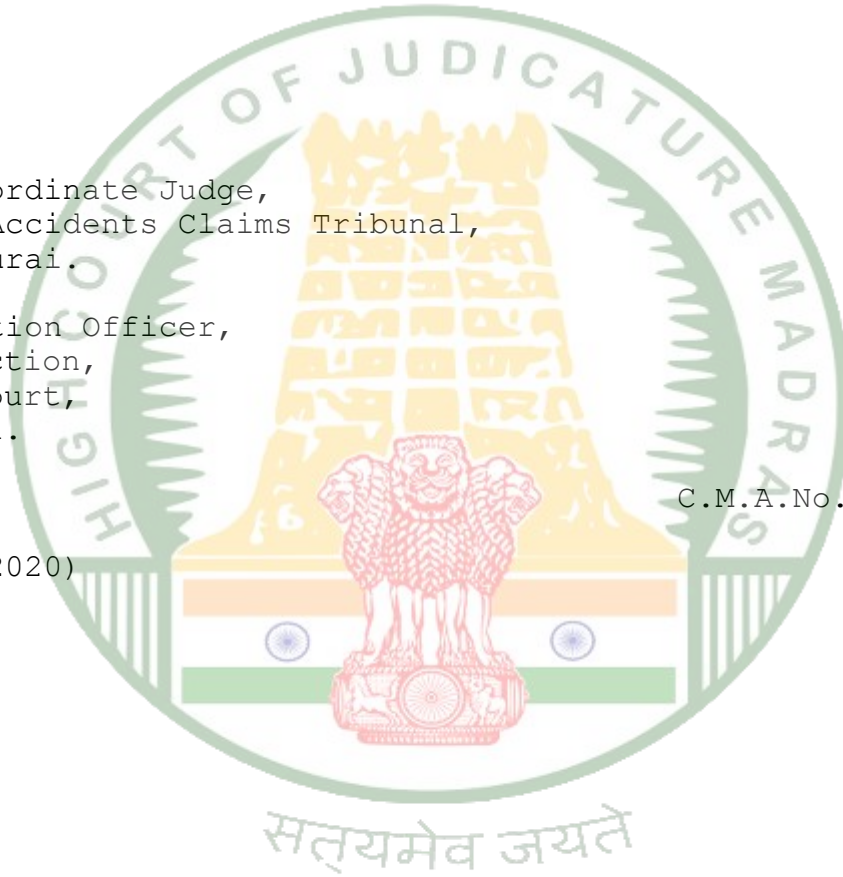
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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Perundurai.
- 2.The Section Officer,
V.R.Section,
High Court,
Chennai.

BR(CO)
GN(15/09/2020)

C.M.A.No.384 of 2015



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